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April 24, 2015

**VIA ECF**

The Honorable James C. Francis  
United States Magistrate Judge  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street, Room 18D  
New York, New York 10007

Re: *United States ex rel. Kester v. Novartis Pharmaceuticals Corp. et al.*,  
Civil Action No. 11-8196 (CM) (JCF)

Dear Judge Francis:

We represent the Relator, David M. Kester, in this case and write to request the Court's assistance with obtaining from the Department of Defense the TRICARE claims information set forth in the attached Exhibit to Relator's proposed subpoena. None of the parties to this action oppose Relator's request.

The information Relator requests is necessary to support Relator's claims that the kickback schemes at issue in this case caused "false" claims for reimbursement to be submitted to the Department of Defense's TRICARE program (formerly known as "CHAMPUS"). Pursuant to Department of Defense regulations and directives, however, Department of Defense personnel are not authorized to release this information in response to a subpoena *duces tecum* signed by counsel or even a Clerk or Deputy Clerk of this Court. *See, e.g.*, 32 C.F.R. § Pt. 516, App. C (Department of Defense Directive 5405.2, "Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses"). To be effective, the subpoena must be signed by the Court. *Id.* Accordingly, Relator respectfully asks the Court to sign the attached draft subpoena, which Relator will then serve on the Department of Defense.

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We are available to discuss this issue at the Court's convenience, and we greatly appreciate the Court's attention to this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Bill Carmody", with a long, sweeping flourish extending to the right.

William Christopher Carmody

Enclosure: Proposed Subpoena with attached Exhibit